



# **OVERVIEW OF THE MILITARY JUSTICE SYSTEM**



## **LOCAL POCs:**

### **Trial Counsels:**

**Joel Cummings (2d BDE)**

**Alison Gregoire (DIVARTY)**

**Phone: 485-8220**

**Victim Witness Liaison: Pam Cater**

**Phone: 485-6506**



# **Commanders' Disciplinary System**

**Do nothing**

**Administrative**

- Oral/written counseling**
- Administrative separation**
- Article 15 action**

**Court-martial**



# PRETRIAL RESTRAINT

- Military Protective Order, DD Form 2873
  - Written order of commander
  - Can be a “no contact” order with victims and witnesses
- Pretrial confinement (no bail) (R.C.M. 305)
- Restriction - for example to the post **or** to the barracks, place of duty, DFAC, chapel, and routes between them (R.C.M. 305) .



# **DISPOSITION OF OFFENSES**

**1 of 4**

- The role of the command is different from the role of the victim advocate.
- Disposition should be timely and at the lowest appropriate level. (R.C.M. 306(b)).



# DISPOSITION OF OFFENSES

2 of 4

Commander considers:

- Nature of and circumstances surrounding the offense and the extent of the harm caused by the offense
- Character and military service of the accused
- Appropriateness of authorized punishment
- Possible improper motives of accuser



# DISPOSITION OF OFFENSES

3 of 4

Commander considers (continued):

- Reluctance of victim and others to testify
- Cooperation of the accused in the apprehension or conviction of others
- Possibility of prosecution of same or similar offenses/charges against accused by state or local authorities



# **DISPOSITION OF OFFENSES**

**4 of 4**

Commander considers (continued):

- Availability and admissibility of evidence
- Existence of jurisdiction over the accused and the offense (normally not an issue)
- Other likely issues (R.C.M. 306(b), Discussion).
- Commanders typically confer with servicing Office of the Staff Judge Advocate on these matters.





# VICTIM RIGHTS

## 1 of 2

- The right to be treated with fairness, dignity, and a respect for privacy.
- The right to be reasonably protected from the accused offender.
- The right to be notified of court proceedings.
- The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial, or for other good cause



# VICTIM RIGHTS

**2 of 2**

- The right to confer with the attorney for the Government in the case.
- The right to restitution, if appropriate.
- The right to information regarding conviction, sentencing, imprisonment, and release of the offender from custody.

AR 27-10, paragraph 18-10



# CONSULTATION WITH VICTIMS

## 1 of 2

- When appropriate, trial counsel, VWL, or other Government representative will consult with victims of crime concerning—
  - Decisions not to prefer charges.
  - Decisions concerning pretrial restraint of the alleged offender or his or her release.
  - Pretrial dismissal of charges.
  - Negotiations of pretrial agreements and their potential terms.



# CONSULTATION WITH VICTIMS

## 2 of 2

- Consultation may be limited when justified by the circumstances, such as to avoid endangering the safety of a victim or a witness, jeopardizing an ongoing investigation, disclosing classified or privileged information, or unduly delaying the disposition of an offense.
- Although the victim's views should be considered, nothing in AR 27-10 limits the responsibility and authority of appropriate officials to take such action as they deem appropriate in the interest of good order and discipline and to prevent service-discrediting conduct. AR 27-10, paragraph 18-15



## **VICTIM/WITNESS LIAISON (VWL)**

- Duties and responsibilities defined in AR 27-10, Chapter 18 and Appendix D (checklists) .
- The VWL in general provides assistance to victims and witnesses where needed with emphasis on court-martial services.
- Located in the Office of the Staff Judge Advocate and frequently in branch offices.



# VICTIM TESTIMONY

Victims can expect to testify at:

1. Article 32 investigation
2. Pretrial motions (rare)
3. Trial

Testimony would be public, in presence of accused and subject to questioning by accused's counsel (cross examination).



# VICTIM INTERVIEWS

Victims may be interviewed multiple times by some all of the following:

- Police investigator
- Medical personnel
- Defense counsel
- Trial counsel



# VICTIM INTERVIEWS MISCELLANEOUS ISSUES

1 of 2

- **DO NOT** document victim's explanation of events of assault.
- If the victim is interviewed by the defense counsel or the trial counsel and you also sit in on the interview in support of the victim **DO NOT** take notes of the victim's explanation of the events of the assault.
- The "do not take notes" advice is provided to assist in avoiding becoming a witness against the victim.





# VICTIM INTERVIEWS

## MISCELLANEOUS ISSUES

### 2 of 2

- If the victim states that he/she does not want to be interviewed by the defense counsel, contact the trial counsel ASAP. **NEVER NEVER** suggest to a victim that the victim can refuse to be interviewed by a defense counsel.
- When meeting with a victim, DO document services provided, needed, offered and services rejected/refused by the victim, but NOT victim's explanation of the events of the assault.



# Nonjudicial Punishment Article 15, UCMJ

1 of 2

- Only CO can issue Article 15s.
    - Summarized
      - Limited Rights (no counsel)
      - Limited punishment (14 days ED/14 days restriction, and reprimand)
    - Formal
      - Company Grade
      - Field Grade
- Punishments differ based upon the rank of the imposing commander



# Article 15 Punishments (Formal Proceedings)

2 of 2

- **Company grade**

- Reduction:
  - E4 and below can get one grade reduction
- Restriction: 14 days and/or 14 days extra duty
- Forfeitures: 7 days pay
- Reprimand/Admonition
- Correctional Custody (7 days)
  - Facilities Restrictions

- **Field grade**

- Reduction:
  - E4 and below to E1
  - E5 & E6 = 1 grade
- Restriction: 60 days OR, with extra duty, 45 days of each
- Forfeitures:  $\frac{1}{2}$  one month's pay for 2 months
- Reprimand/Admonition
- Correctional Custody (30 days)
  - Pay grade restrictions
  - Facilities restrictions



# Judicial Punishment Trial by Courts-Martial

1 of 2

## Levels of Court-Martial

- **Summary Court-Martial (SCM)**

30 days confinement, loss of two-thirds pay per month for 1 month

- **Special Court-Martial (SPCM)**

Bad Conduct Discharge (BCD), 1 year confinement, loss of two-thirds per month for 12 months



# Judicial Punishment Trial by Courts-Martial

2 of 2

## Levels of Court-Martial

### – General Court-Martial (GCM)

Death, Dishonorable Discharge (DD), BCD,  
life

without parole, total forfeiture of all pay  
and allowances



# Anatomy of a Trial

## 1 of 3

- Investigation
- Pretrial Restraint (**MPOs, Confinement**)
- Preferral of Charges
- Article 32 Investigation (GCM Only)
  - **Role of Victims and Witnesses**
- Referral of Charges
- Pretrial Negotiations
  - **Consultation with Victims**
- Arraignment
  - Forum Selection
  - Motions
  - Pleas



# Anatomy of a Trial

2 of 3

- Voir Dire
- Opening Statements
- Prosecution Evidence
- Defense Evidence
- Prosecution Rebuttal (Surrebutal as permitted)
- Argument
- Deliberation
- Findings

**Victim/Witness  
Presence**



# Anatomy of a Trial

## 3 of 3

- Prosecution Sentencing Evidence
  - Victim Impact Statements
- Defense Sentencing Evidence
- Rebuttal (Surrebuttal as permitted)
- Deliberation
- Announcement of Sentence
  - Effective dates, financial impacts, etc  
(covering in detail in later slides)
- Post-Trial Submissions (Requests for Clemency)
- Action





# Effects of Sentencing

- Confinement is effective immediately.
- Reductions in rank are effective 14 days after announcement of sentence.
- Forfeitures are effective 14 days after announcement of sentence.
- Above rules are general rules. All of these punishments can be delayed and reduced.



# Defense Counsel/Issues

## 1 of 2

- Defense counsel represents **only** the Soldier
- Required to zealously represent Soldier
- Privileged communication
- Access to documents
- Access to witnesses
  - Presence of VA or VWL during interview
  - VA/VWL as potential witness



# Defense Counsel/Issues

## 2 of 2

- Accused is entitled to privacy and a fair trial
- Accused is entitled to presumption of innocence in any criminal trial
- False reporting of offenses can be
  - False official statement
  - False swearing
  - BOTH are violations of UCMJ



# Selected UCMJ Offenses

- Rape (Article 120(a), UCMJ)
- Indecent Assault (Article 134, UCMJ)
- Forcible Sodomy (Article 125, UCMJ)



# Rape (UCMJ, Article 120(a))

- Elements
  - Accused committed an act of sexual intercourse, AND
  - Act of sexual intercourse was done by force and without consent.
- Maximum punishment for adult victim at GCM
  - Dishonorable discharge,
  - Forfeiture of all pay and allowances, and
  - Confinement for life without eligibility for parole



# Rape (UCMJ, Article 120(a))

- Force/lack of consent:
  - Physical force in an act of sexual intercourse without consent.
  - Constructive force (use of threats, intimidation or the abuse of authority, can cause the victim to believe that death or injury which would occur if he/she resisted ).
  - Unconscious (e.g. by intoxication) victim is incapable of giving consent.



# Indecent Assault (UCMJ, **Article 134**)

- Elements
  - Accused assaulted a person (**not accused's spouse**) in a certain manner(e.g. intimate parts);
  - Acts were done with intent to gratify lust or sexual desires of accused; and
  - Conduct of accused was to the prejudice of good order & discipline or of a nature to bring discredit on the armed forces.
- Maximum Punishment at GCM
  - Dishonorable discharge
  - Forfeiture of all pay & allowances, and
  - Confinement for 5 years



# **Forcible Sodomy (UCMJ, Article 125)**

- Elements
  - Accused engaged in “unnatural carnal copulation” (e.g. oral or anal sex) with a certain person
  - Act done by force and without the consent of the other person.
- Maximum Punishment at GCM
  - Dishonorable discharge,
  - Forfeiture of all pay and allowances, and
  - Confinement for life without eligibility for parole





# Other Sex-Related Offenses

- Indecent Acts with Another (Article 134, UCMJ) e.g. consensual sex in public or consensual sex in presence of roommates
- Adultery (Article 134, UCMJ)
- Non-Forcible (Consensual) Sodomy (Article 125, UCMJ)
- **Description of offenses is a general orientation. Consult w/ servicing trial counsel before discussing elements with a victim.**